

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 466 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

LAKHABHAI LAVJIBHAI PATEL

Appearance:

MR BY MANKAD, ADDL. PUBLIC PROSECUTOR for appellant
MR MM TIRMIZI for PM THAKKAR for Respondent

CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 06/10/98

ORAL JUDGEMENT

State, being aggrieved by an order of acquittal recorded by Chief Judicial Magistrate, Rajkot on 10.1.1991 in Criminal Case No. 3662 of 1983 wherein the accused was tried for an offence punishable under section 85 of the Gold Control Act, 1968 (hereinafter referred to as the Act), has preferred this appeal.

2. From the record it transpires that on 27.8.1981

at 11.15 a.m., officers of the Income Tax Department raided the premises of the accused with a search warrant. From the cupboard of the bed room of the accused, one packet was found containing two pieces of primary gold (commonly known as 'dhalia') - one weighing 170.350 gms. and the other weighing about 179.400 gsm. The gold was tested and as per the market value, the same was valued at Rs.60,000/-. The gold was seized under a panchnama and after obtaining authorisation as contemplated under section 97 (1) of the Act, complaint came to be filed.

3. Prosecution examined members of the raiding party to prove that the accused was in conscious possession of the gold. On behalf of the accused, it was pleaded that the prosecution has failed to prove the case; that there is no legal and valid sanction inasmuch as the authority is required to apply its mind before granting sanction; that the officer who conducted the inquiry has not been examined by the prosecution.

4. The trial Court has repeatedly mentioned in the judgment the submissions made on behalf of the accused and that benefit should be given to the accused, and has acquitted the accused without giving adequate reasons for passing an order of acquittal.

5. In the instant case, the prosecution has pointed out that the accused was in possession of primary gold as defined in sub-clause (r) of section 2 of the Act, which reads as under:-

' "primary gold" means gold in any unfinished or semi finished form and includes ingots, bars, blocks, slabs, billets, shots, pellets, rods, sheets, foils and wires. '

5.1 From the panchnama, it is very clear that the material which was seized was primary gold from the house of the accused. There is sufficient evidence on record to show that the accused possessed primary gold. Trial Court has not at all considered this aspect. The statement of accused, vide Exh. 18 has not been taken into consideration by the trial Court wherein the accused, before prosecution, admitted possession of 350.50 gm. of primary gold having purchased from Soni Kunvarji Motibhai on 15.8.1981 and 17.8.1981 for which the accused could not produce bill or any other document. Evidence of Rajnikant Kikani, PW. 1, Vithalrai Bhatt, PW.2, Balvantrai, Gold Smith, PW. 5, clearly reveal that accused was in possession of primary gold.

6. On behalf of the accused, Mr. Tirmizi submitted that in the instant case, only 350 gms. of gold was sized which was required by the accused for the purpose of marriage ceremony of his daughters. He further submitted that the accused had in all six daughters and looking to the community to which the accused belong to, he was required to give some gold ornaments to each daughter at the time of their marriage. He further submitted that today, the accused is aged about 77 years. He further submitted that the Act has since been repealed, and in that view of the matter, the State should not have preferred this appeal in a matter like this. In the circumstances, Mr. Tirmizi submitted that the accused may be sentenced to pay a fine only. Mr. Mankad, learned Additional Public Prosecutor has also fairly stated that if fine is imposed ends of justice will be met with.

7. Section 85 of the Act refers to punishment for illegal possession of gold. In the instant case, the accused was in possession of primary gold, the value of which does not exceed Rs.1 lakh, thus falling within the purview of section 85 (1) (b) of the Act. Considering the various submissions made by Mr. Tirmizi on behalf of the accused which I have recorded in the foregoing paragraph, I am convinced that ends of justice will be met with if the accused is sentenced to pay fine. The accused is, therefore, sentenced to pay a fine of Rs.5000/- (Rupees five thousand only) which he is directed to deposit in the trial Court within a period of six weeks from today. In default of payment of fine, the accused shall undergo simple imprisonment for a period of three months.

The appeal stands allowed accordingly.

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